CF0000060904

Cr. A 85/97 (1)

XX 189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER Division Bench (Criminal)

No. 4738 Name छोटे उर्फ मदन

Father's name बलवंत सिंह उम्र लगभग 30 साल

Residence बिलासपुर (M.P.) Age 28 वर्ष

Sentenced to आजीवन कारावास On 21.11.96

Under section 302 भा.द.वि. by अतिरिक्त सेशन न्यायाधीश बिलासपुर (M.P.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent ..... 12.-1996 .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 4738 Name छोटे उर्फ मदन पिता बलवंत

Confined in ..... Jail रायपुर (M.P.)

No. 05/Jail/96 Dated 1/1/1996 1/1/97

Forwarded to the CHIEF JUDICIAL MAGISTRATE बिलासपुर (M.P.) धारा 302 भा.द.वि.

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न – सत्र प्रकरण क्रमांक 178/96-ब.
प्रमाणित निर्णय प्रतिलिपि

Superintendent,
Central Jail, Raipur. (M.P.)
Jail

Date of receipt in ..... office NOV. 29 DEC - 31 JAN - 1

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No 199

Forwarded to the .....

Date of receipt in Appellate Court

High Court of Madhya Pradesh
JABALPUR
10 JAN 1997
Reg. No. 2
Recpt Clerk
High Court, Jabalpur

(P. T. O.)

(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.85/97 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI DHIRENDRA MISHRA, JJ

13.1.2005

Shri R.K. Jaiswal, counsel for the appellant.

Shri J.D. Bajpayee, Govt. Advocate for the State.

Appellant Konda @ Sadanand has preferred this appeal under Section 374 (2) of the Criminal Procedure Code through Superintendent, Central Jail, Raipur being aggrieved by the judgment of conviction and sentence dated 1st November, 1996 passed by learned 6th Additional Sessions Judge, Bilaspur in Sessions Trial No.178/96 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life for committing murders of Smt. Meghai Bai & one Haricharan.

Brief facts leading to filing of this appeal are that on 7.2.1996 at about 1 p.m. during the day accused/appellant Konda @ Sadanand was knocking down the goat on the road, when PW-3 Shivcharan tried to advise him not to do so, accused/appellant abused him. Accused/appellant Konda was carrying axe in his hand, same was snatched by PW-3 and was handed over to PW-4 Daras, who is the uncle of the accused/appellant. After some time again accused/appellant started knocking down the bicycle of Panchayat Secretary Haricharan and thereafter, entered his house and came out from the house with an axe, sickle & hammer. He

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मामला क्रमांक G.A.85/92 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

caught hold of Meghai Bai by hairs, who was coming out from the house of Village Sarpanch Smt. Koshalya Bai and pulled down her and attacked with axe on her neck. On this, the villagers collected there and started crying, however, the accused/appellant entered the house of Smt. Koshalya Bai, started breaking Almirah, cot, fan & glass goods and also attacked Panchayat Secretary-Haricharan, who was sitting in the house of Smt. Koshalya Bai. Thereafter, when accused/appellant came out from the room, they saw that the accused/appellant was coming out from the room with axe and sickle stained with blood. The villagers went inside the room and saw that Haricharan was lying in the room in the injured condition having injuries on his face and blood was oozing out from the injuries.

The matter was reported by PW-1 Bhikam Prasad to Police Station Masturi. A.R. Qureshi, S.I. after registering the case (Ex.P-1) reached to the scene. Injured Haricharan also came to the police station along with PW-1 Bhikam Prasad in injured condition and when A.R. Qureshi saw that the blood was oozing out from the injuries of Haricharan then he sent him to the Masturi Hospital under Ex.P-6 and as the doctor was not available in the Masturi Hosptial, therefore, Haricharan was sent to the Government Hospital, Bilaspur where he died. When A.R. Qureshi reached on the sport he saw that the accused/appellant was sitting there, as the villagers had caught hold of him and injuries were also present on his body. A.R. Qureshi prepared the Panchnama of the body of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

deceased Meghai Bai (Ex.P-9) after giving notice Ex.P-8 to the Panchas of the Village and dead body of deceased Meghai Bai was sent for post mortem examination to Primary Health Centre, Masturi under Ex.P.10. A.R. Qureshi, S.I. took into the possession plain soil and blood stained soil from the place of incident under Ex.P-1. One hammer, sickle and Lungi, which were lying near the body of deceased Meghai Bai were taken into possession by A.R. Qureshi. The cycle was taken into possession under Ex.P-12 and from the place where Haricharan was attacked a blood stained knife was recovered, broken spectacle stained with blood, HMT watch of Haricharan and one Gamcha stained with blood were taken into possession under Ex.P-13. Witness Dhaniram also produced the axe which was snatched from the accused/appellant and same was also taken into possession under Ex.P-14. Clothes of accused/appellant were also taken into possession under Ex. P-15 and after completion of investigation charge sheet was filed against accused/appellant in the Court of Judicial Magistrate First Class, Bilaspur, who in turn committed the case to learned Sessions Judge, Bilaspur from where learned 6th Additional Sessions Judge received the case on transfer.

Learned Additional Sessions Judge after framing the charge recorded the prosecution evidence and also recorded the statement of accused/appellant under Section 313 of Cr.P.C. in which the accused/appellant denied the prosecution evidence and stated that he is innocent. After hearing the argument of learned Additional

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Public Prosecutor and counsel for the accused/appellant, learned Additional Sessions Judge convicted and sentenced the accused/appellant as mentioned above.

We have heard learned counsel for accused/appellant Shri R.K. Jaiswal and learned Government Advocate Shri J.D. Bajpayee on behalf of the State.

As far as the question of deaths of Meghai Bai & Haricaharan are being considered as homicidal, learned counsel for the accused/appellant has not disputed this fact. Even otherwise, as per evidence of P.W-10 Dr.P.C.Gupta, who conducted the postmortem on 08.02.1996 on the body of Haricharan, has stated that he saw the multiple incised wounds present on the body, face, near eyes and on account of that eye wall was also cut, right maxillary bone was found cut, incised wound on the nuzzle bone up to bone, deep, nuzzle bone was found fractured, there was an incised wound below the eye in the size of 4cm x 1cm, another incised wound in the size of 6x1½ cm, one another incised wound of 2½ x1x½ cm on the stomach, the intestine was coming out. On opening the skull bone was found fractured, haematoma was also present. Maxillary Bone and nuzzle bones were found fractured and cause of death was head injuries. He prepared the post mortem report Ex.P-26. PW-12 Dr. Mohan Ottalwar has stated that on 8.2.1996 he was working in the Primary Health Centre, Masturi and on that day at about 11.00 a.m. he conducted post mortem on the body of Meghai Bai. There was an incised wound on the neck

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of 1 inch x ½ inch x ½ inch, which was clotted with blood. There was another lacerated wound on the occipital region which was of 3 inch x 2 inch. The occipital bone was fractured into pieces. The injuries were caused by sharp edged and hard weapon. Cause of death was excessive bleeding and shock on account of the head injuries. Post mortem report is Ex.P-31. Therefore in view of the evidence of these two doctors and eyewitnesses PW-2 Koshalya Bai, PW-4 Daras, PW-6 Rameshwar Prasad & PW-8 Vasudeo, it stands proved that accused/appellant attacked Meghai Bai and Haricharan with sharp edged & hard weapons i.e. axe and knife, as a result of which death were caused, therefore, death of Meghai Bai and Haricharan were homicidal in nature.

Now, coming to the question of involvement of the accused/appellant in commission of murder of Meghai Bai and Haricharan. In this case PW-4 Daras, who is an eyewitness and uncle of deceased, has stated in clear terms that on the fateful day at about 12.00 noon when he returned to his house he saw that PW-3 Shivcharan was bringing the goat of accused/appellant Konda. He handed over the goat to the wife of accused/appellant, at that time accused was going to his house. Witness PW-3 snatched the axe from the accused/appellant and gave him and in turn he kept that axe in the house of one Janakram. When accused/appellant reached in front of his house he saw that accused/appellant started knocking down the bicycle of Panchayat Secretary Haricharan and thereafter, accused/appellant went to his house

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and came out with axe, hammer and sickle, at that time Meghai Bai was returning from the house of Smt. Koshalya Bai, accused/appellant caught hold of her by hairs, pulled down her and attacked her with axe on her neck. On seeing this, the villagers collected and started crying, on this the accused/ appellant entered the house of Smt. Koshalya Bai and started breaking Almirah, cot, fan and glass goods, at that time Panchayat Secretary Haricharan, was sitting in the room. Thereafter, he saw that the accused/appellant was coming out of the room with the axe and sickle stained with blood. Thereafter, they entered into the room and saw that Secretary Haricharan was lying in an injured condition, injuries were present on his face. Then, Haricharan was taken to the hospital where he died. This witness is none else than the uncle of accused/appellant Konda and evidence of this witness stands corroborated by PW-6 Rameshwar Prasad, who has also stated that accused/appellant attacked Meghai Bai with an axe. PW-8 Vasudeo has also stated that accused/appellant attacked Meghai Bai with an axe. Evidence of these witnesses is also corroborated by PW-2 Koshalya Bai.

As per medical evidence of Dr. P.C. Gupta (PW-10), Dr. Mohan Ottalwar (PW-12) and postmortem report (Ex.P-31 & P-27) the corresponding injuries which were stated by these witnesses in their oral evidence were found on the bodies of Meghai Bai and Haricharan. In cross-examination of these witnesses the defence has not been able to brought anything on record, which makes

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —7—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

evidence of these witnesses unreliable and untrustworthy rather there is no cross-examination indicating any innocence of the accused/appellant or that accused/appellant committed the heinous crime in a heat of passion or losing sense. PW-2 Koshalya Bai, who was Sarpanch of the Village, has also corroborated the evidence of the eyewitnesses and stated that she was also present on the spot. She has also stated that the accused/ appellant was coming towards his house having axe in his hand and she warned Haricharan, but he had not realized the seriousness and remained in the room. She further stated in paragraph–3 of her statement that the accused/appellant attacked Meghai Bai with an axe.

Therefore, in view of above evidence of these eyewitnesses, the prosecution has been able to establish the involvement of the accused in attacking and committing the murder of Meghai Bai and Haricharan beyond reasonable doubt.

Learned counsel for the accused/appellant argued that prosecution has not been able to prove the motive behind the crime and it is not understandable that why a person like accused/appellant commit the murder of two persons without any rhyme and reason. But we are unable to accept this argument advanced by learned counsel for the accused/appellant. It is settled law that where the prosecution case is based on the evidence of eyewitnesses then the existence or non-existence of the motive, sufficiency or insufficiency of motive will not play such a major role and when clear cogent legal evidence of eyewitnesses is

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

available showing involvement of the accused in crime then absence of motive becomes irrelevant.

The other argument advanced by learned counsel is that no weapon of offence was recovered from possession of the accused/appellant. Therefore, he cannot be held guilty for committing the murder of Meghai Bai and Haricharan.

As mentioned above that there are eyewitnesses to the incident i.e. PW-4 Daras, PW-6 Rameshwar Prasad, PW-8 Vasudeo and PW-2 Kaushalya Bai and it has clearly come in the evidence that the weapons of offence were recovered from the spot. PW-9-Investigating Officer A.R. Qureshi stated that one axe was produced by Dhaniram, which was snatched from the accused/appellant was stained with blood and it was taken into possession under Ex.P-14 and the knife which was used for attacking deceased Haricharan was also recovered from the same room under Ex.P.13 by the Investigating Officer where the offence was committed. In view of evidence of investigating officer regarding recovery of weapons of offence, the evidence of Daras PW-4 & Shivcharan PW-3, regarding snatching of weapon of offence from accused/appellant and recovery of same by Investigation Officer, we do not find any substance in the arguments of learned counsel.

Therefore, we are of the considered opinion that the finding of conviction recorded by learned 6th Additional Sessions Judge does not suffer from any illegality or infirmity, same is based on the cogent, reliable and trustworthy evidence of eyewitnesses and

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मामला क्रमांक Cr. App. 85/97 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	we do not find any reason to differ from the finding of the trial court. The way in which accused/appellant committed two murders in quick succession and that too of two innocent persons and looking to the weapons of offence used in crime, it establishes that the accused/appellant attacked the deceased persons with an intention to commit their murder. In the result, we do not find any substance in this appeal, same is liable to be dismissed and accordingly, it is dismissed. Consequently, M.Cr.P. No.1760/04, 3284/04 & I.A. No.4539/04 also stand dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

Roshan/-